

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER 97-0160**  
**SALES TAX**  
**For Tax Periods: 1992-1994**

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**Issues**

**Sales and Use Tax** - Property Stored And Subsequently Used Outside The State

**Authority:** IC 6-2.5-3-2 (a), IC 6-2.5-3-1(b), Miles, Inc. v. Indiana Department of State Revenue, 659 N.E.2d 1158 (1995).

**Statement of Facts**

Taxpayer is a manufacturer of medical equipment that is sold to hospitals and clinics. After an audit of the years 1992-1994, the Indiana Department of Revenue assessed additional sales and use tax. Taxpayer protested several issues. Only one issue remained at the time of the hearing. More facts will be provided as necessary.

**Sales and Use Tax** - Property Stored And Subsequently Used Outside The State

**Discussion**

Taxpayer protests the assessment of use tax on certain promotional materials.

Indiana imposes a use tax at IC 6-2.5-3-2 (a) as follows:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the

property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

The word "storage" is defined at IC 6-2.5-3-1(b) as follows:

"Storage" means the keeping or retention of tangible personal property in Indiana for any purpose except the subsequent use of that property solely outside Indiana.

The Indiana Tax Court dealt with the use tax liability of property stored in Indiana for subsequent use outside the state in Miles, Inc. v. Indiana Department of State Revenue, 659 N.E.2d 1158 (1995). In that case, Miles stored promotional materials in its Indiana warehouse and later shipped the promotional items to other states. The Court held that this storage was not subject to the use tax. In making this determination, the Court said as follows:

If property is stored in Indiana for subsequent use outside Indiana, then the activities of storing, handling, and transporting the property cannot be taxed as "uses." Therefore, the Court holds that the storage of the promotional items in, and the withdrawal of them from, Miles' Indiana warehouses for shipment out of state do not constitute taxable "uses", but rather fall under the storage exception in IC 6-2.5-3-1(b).

Taxpayer purchased promotional materials, received them in Indiana and stored them in its Indiana warehouse. Taxpayer then shipped the overwhelming majority of these materials to other states for distribution outside of Indiana. Taxpayer determined how many of the promotional items were shipped out of Indiana each year by applying the apportionment percentage of its sales outside of the state. In this instance, this is a reasonable methodology for determining the percentage of promotional materials which were distributed in Indiana and the percentage distributed outside of Indiana. In 1992 Taxpayer made 97% of its sales outside the state. In 1993 Taxpayer made 98.546% of its sales outside the state. In 1994 Taxpayer made 96% of its sales outside the state. Taxpayer agrees that promotional materials equal to the proportion of sales made within the state are subject to the use tax. Taxpayer contends that promotional materials equal to the proportion of sales made outside the state qualify for exemption. Taxpayer's fact situation is identical to the Miles' fact situation which the Court found qualified for exemption. Therefore Taxpayer's storage of promotional materials to be subsequently used out of the state also qualifies for exemption.

Taxpayer also paid sales tax on the purchase of certain promotional materials. During the audit period, Taxpayer sought a credit for these sales tax payments. The Auditor referred to this request for a credit in a letter dated March 4, 1997. The letter stated that "the purchases were discussed during the audit and credit was denied." The Auditor correctly denied the request for credits of sales taxes paid because the storage for subsequent use outside the state exemption is specifically for the use tax. There is no comparable exemption for the sales tax.

**Finding**

Taxpayer's protest to 97% of the 1992 assessment, 98.546% of the 1993 assessment and 96% of the 1994 assessment is sustained. There is to be no credit for sales taxes paid on promotional materials.

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